

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<b>In re:</b>	<b>§</b>	<b>Chapter 11</b>
	<b>§</b>	
<b>W.R. GRACE &amp; CO., et al.,</b>	<b>§</b>	<b>Jointly Administered</b>
	<b>§</b>	<b>Case No. 01-01139 (JKF)</b>
<b>Debtors.</b>	<b>§</b>	
	<b>§</b>	

**FEE AUDITOR'S FINAL REPORT REGARDING FIRST  
QUARTERLY FEE APPLICATION OF R. KARL HILL,  
SEITZ, VAN OGTROP & GREEN, P.A., FOR THE PERIOD  
FROM SEPTEMBER 29, 2008 THROUGH MARCH 31, 2011**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the First Quarterly Fee Application of R. Karl Hill, Seitz, Van Ogtrop & Green, P.A., for the Period from September 29, 2008 through March 31, 2011 (the “Application”).

**BACKGROUND**

1. R. Karl Hill (“Mr. Hill”) was retained as local counsel to the Honorable Alexander M. Sanders, Jr. (“Judge Sanders”), the Legal Representative for Future Asbestos-Related Property Damage Claimants. In the Application, Mr. Hill seeks approval of fees totaling \$5,355.00 and expenses totaling \$4.80 for his services from September 29, 2008 through March 31, 2011 (the “Application Period”). This is Mr. Hill’s first quarterly fee application in the case.

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of

Delaware, Amended Effective February 1, 2011, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §330, Issued January 30, 1996 (the "U.S. Trustee Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served an initial report on Mr. Hill based upon our review, and we received a response which was sent on Mr. Hill's behalf from Alan B. Rich, Judge Sander's counsel. Portions of this response are quoted herein.

## DISCUSSION

### General Issues

3. In our initial report, we noted that although the Application purports to cover the period from September 29, 2008 through March 31, 2011, Mr. Hill's retention order provides that it is *nunc pro tunc* to September 29, 2009. *See Order Pursuant to Sections 327 and 1107 of the Bankruptcy Code Authorizing Retention Nunc Pro Tunc of Karl Hill, Esq., as Counsel to Hon. Alexander Sanders, Jr., Legal Representative for Future Asbestos-Related Property Damage Claimants and Holders of Demands* (Docket No. 20573).<sup>1</sup> We asked Mr. Hill about this inconsistency and, through counsel, he responded as follows:

Addressing paragraph 3, we appreciate your discovery that the Court never entered the revised order we presented back in 2009, correcting the *nunc pro tunc* date of Mr. Hill's retention. We have filed a Certification of Counsel [Doc. #27127] which should resolve this issue.

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<sup>1</sup>Mr. Hill's retention application was filed on December 9, 2008, and in the application, he requested retention *nunc pro tunc* to December 1, 2008. Thus, it appears there may have been a typographical error in the order which was submitted to the Court. We note that none of Mr. Hill's time and expense entries precede December 1, 2008.

We note that as of the date of this report, the Court has not yet entered the order referenced in the Certification of Counsel to which the response refers. Thus, our recommendations concerning Mr. Hill's fees and expenses are contingent upon the Court's entry of his revised retention order.

Specific Time Entries

4. We noted the following time entries pertaining to work on Mr. Hill's fee agreement:

12/02/2008	RKH	Work on fee agreement - retention papers. <sup>2</sup>	1.50
12/03/2008	RKH	Emails w/ Rich re: revising fee (.3); agreement; review fee agreement (.2)	0.50
			<b>2.00</b>

We note for informational purposes that our review of the time entries indicates that Mr. Hill's work on this case consists solely of reviewing various court filings, and attending to his own retention and billing. However, unlike a retention application, a fee agreement is required regardless of whether the client is involved in a bankruptcy case. Thus, time spent on preparation and negotiation of a fee agreement appears to us to be part of a firm's cost of doing business. We asked Mr. Hill to explain why these fees should be compensated by the bankruptcy estate, and we received the following response from Mr. Rich: "Mr. Hill and Judge Sanders concur with your observation ... and would agree to deduct the two hours in question." We appreciate this response and recommend a reduction of \$600.00 in fees.

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<sup>2</sup>As this time entry is "lumped," the exact amount of time attributable to work on the fee agreement could not be determined.

## CONCLUSION

5. Thus, we recommend approval of \$4,755.00 in fees (\$5,355.00 minus \$600.00) and \$4.80 in expenses for Mr. Hill's services for the Application Period.<sup>3</sup>

Respectfully submitted,

**WARREN H. SMITH & ASSOCIATES, P.C.**

By: 

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## FEE AUDITOR

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 30<sup>th</sup> day of June, 2011.

  
Warren H. Smith

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<sup>3</sup>These recommendations are contingent upon the Court's approval of the revised retention order discussed in paragraph 3. Alternatively, in the event the Court does not approve Mr. Hill's revised retention order, we recommend approval of fees totaling \$3,315.00 (\$5,355.00 less \$2,040.00 in fees billed prior to Mr. Hill's current retention date of September 29, 2009) and \$4.80 in expenses for Mr. Hill's services for the Application Period.

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